IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 297 OF 2007.

The Communidade of Pilerne,
Through its Attorney,
Shri Cosmas Fernandes,
having its office at Pilerne,
Marra, Bardez, Goa. .... Petitioner.

Versus

1. The State of Goa,
   Through the Chief Secretary,
   Secretariat Complex,
   Porvorim, Bardez, Goa.

2. The Directorate of Agriculture,
   Govt. of Goa,
   Panaji, Goa. .... Respondents.

Mr. P. A. Kamat, Advocate for the Petitioner.

Mr. S. R. Rivonkar, Government Advocate for the Respondents.

CORAM: S. A. BOBDE , J.

DATE: 21st JUNE, 2007

ORAL JUDGMENT:

Rule. Rule returnable forthwith. Heard by consent.

2. The petitioner has challenged two Orders, both dated 5th June, 2007. By the first impugned order, the trial Court has merely stated that the petitioner's objection will be considered at the stage of appreciation of evidence. The petitioner had objected on the ground that certain statements have been made by the defendants which are beyond the scope of the pleadings. One can see nothing wrong in the decision of the

trial Court to consider whether the statements in evidence are beyond the scope of the pleadings at the stage of appreciation of evidence. This order was passed by the trial Court on an application with the title " Application to Discard the Part of the Affidavit in Evidence". Such an application is not supported by any provision of the Code of Civil Procedure and is an unnecessary attempt to dilate the proceedings before the trial Court. There is also no merit in such a party approaching this Court in the exercise of its extraordinary jurisdiction.

3. Mr. Kamat relied on a decision of this Court in ***Haren Krishnakumar Mehta v. Kamla Pribhdas Nebhanani*** reported in **A.I.R. 2001 Bombay 187** in which this Court has held that a party who has tendered evidence beyond the pleadings need not be cross-examined by the other party in that regard. This judgment has no relevance to the prayer of the petitioner in this case. The observations were made by the learned Single Judge at the stage of final hearing of the suit which is precisely what the trial Court intends to do in the present case.

4. As far as the other impugned order is concerned, it is merely an order by which the trial Court has stated that the documents produced by the defendants are public documents and the plaintiff can cross-examine the defendants' witnesses. The defendants have been allowed to produce the documents. The learned counsel for the petitioner objected to this order on the ground that the documents are not public documents and have still been allowed to be produced. What is overlooked by the

petitioner is that the documents have not been exhibited. Yet as also agreed to by the learned counsel for the respondents, Mr. Rivonkar, the documents have been merely allowed to be produced and certainly the petitioner will be entitled to object to the documents being exhibited and also cross-examine the defendants in case such documents are allowed to be exhibited.

There is no merit in this petition which is hereby dismissed.

S. A. BOBDE, J.

sl.